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SERVICE DATE – SEPTEMBER 21, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21082

ALL ABOARD AMERICA! HOLDINGS, INC.—ACQUISITION OF CONTROL—LUX BUS
AMERICA CO.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: On August 14, 2018, All Aboard America! Holdings, Inc. (AAAH), a noncarrier, filed an application under 49 U.S.C. § 14303 for AAAH to acquire a 100% equity interest in Lux Bus America Co. (Lux Bus), an interstate motor carrier of passengers. On August 23, 2018, AAAH filed a supplement to its application. The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules at 49 C.F.R. §§ 1182.5 and 1182.8.

DATES: Comments must be filed by November 5, 2018. The applicant may file a reply by November 20, 2018. If no opposing comments are filed by November 5, 2018, this notice shall be effective November 6, 2018.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21082 to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, send one copy of comments to AAAH's representative: Andrew K. Light, Scopelitis, Garvin, Light, Hanson, & Feary, P.C., 10 W. Market Street, Suite 1400, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe (202) 245-0376. Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.

SUPPLEMENTARY INFORMATION: AAAH is a Delaware corporation and a noncarrier. AAAH is wholly owned by AAAH Acquisition Corporation, a corporation and noncarrier, which in turn is wholly owned by AAAH Intermediate Holdings LLC, a limited liability company and noncarrier. AAAH Intermediate Holdings LLC is wholly owned by AAAH TopCo Corporation, a corporation and noncarrier, which is in turn wholly owned by AAAH Holdings LLC, a limited liability company and noncarrier. AAAH Holdings LLC is controlled by Tensile Capital Partners Master Fund LP, a limited partnership and noncarrier, which in turn is controlled by its general partner, Tensile Capital GP LLC, a limited liability company and noncarrier.

AAAHI controls the following motor carriers of passengers (the Affiliated Carriers): AAAHI Regional Acquisition Corporation (ARAC); Ace Express Coaches, LLC (ACE); Hotard Coaches, Inc. (Hotard); Industrial Bus Lines, Inc. (Industrial); McClintock Enterprises Inc. (McClintock); and Sureride Charter Inc. (Sureride).

AAAHI provides a description of each of the Affiliated Carriers, as summarized below:

- ARAC is a recently formed motor carrier that has not yet begun its passenger transportation activities. The USDOT Number assigned to ARAC is 3140195, but ARAC does not yet have a USDOT Safety Rating. ARAC holds interstate operating authority from the Federal Motor Carrier Safety Administration (FMCSA) under MC-098597. As ARAC has not yet commenced its passenger service operations, it does not currently utilize any vehicles or drivers.
- Ace is an interstate motor carrier providing regional charter, contract, and casino passenger charter services in the state of Colorado and surrounding areas. The USDOT Number assigned to Ace is 2589674, and Ace has a “Satisfactory” USDOT Safety Rating. Ace holds interstate operating authority from FMCSA under MC-908184. In providing its services, Ace utilizes approximately 80 vehicles and 99 drivers.
- Hotard is an interstate motor carrier providing local and regional passenger charter services primarily within the states of Louisiana and Mississippi. The USDOT Number assigned to Hotard is 156451, and Hotard has a “Satisfactory” USDOT Safety Rating. Hotard holds interstate operating authority from FMCSA under MC-143881. In providing its services, Hotard utilizes approximately 295 vehicles and 308 drivers.
- Industrial, doing business as All Aboard America, is an interstate motor carrier providing local and regional passenger charter services generally in the states of Arizona, New Mexico, and Texas. The USDOT Number assigned to Industrial is 27402, and Industrial has a “Satisfactory” USDOT Safety Rating. Industrial holds interstate operating authority from FMCSA under MC-133171. In providing its services, Industrial utilizes approximately 116 vehicles and 140 drivers.
- McClintock, doing business as Goldfield Stage & Co., is an interstate motor carrier providing local and regional passenger charter, tour, and contract shuttle services in south California and surrounding areas. The USDOT Number assigned to McClintock is 291979, and McClintock has a “Satisfactory” USDOT Safety Rating. McClintock holds interstate operating authority from FMCSA under MC-191442. In providing its services, McClintock utilizes approximately 27 vehicles and 62 drivers.

- Sureride, doing business as Sundiego Charter Co. and SunExpress Charter Co., is an interstate motor carrier providing local and regional passenger charter, tour, and contract shuttle services in south California and surrounding areas. The USDOT Number assigned to Sureride is 701846, and Sureride has a “Satisfactory” USDOT Safety Rating. Sureride holds interstate operating authority from FMCSA under MC-324772. In providing its services, Sureride utilizes approximately 104 vehicles and 106 drivers.

AAAHl explains that under the proposed transaction, it would acquire 100% of the equity interest in Lux Bus. AAAHI states that Lux Bus is a California corporation that provides interstate and intrastate passenger group charter motor coach and shuttle services in the Los Angeles, Cal. and San Francisco, Cal. areas. Lux Bus also provides daily round trip and one-way individual passenger service from the Los Angeles area to Las Vegas, Nev., along with individual tour services to amusement attractions in the greater Los Angeles area. Lux Bus utilizes terminals and maintenance facilities located in Anaheim, San Jose and Stockton, Cal. The USDOT Number assigned to Lux Bus is 1125439, and Lux Bus has a “Satisfactory” USDOT Safety Rating. Lux Bus holds interstate operating authority from FMCSA under MC-459355. For purposes of its California intrastate operations, Lux Bus operates pursuant to intrastate authority issued by the California Public Utilities Commission (CPUC) under Class A Passenger Charter Certificate No. TCP 22650-A. In providing its services, Lux Bus utilizes approximately 160 vehicles and 192 drivers.¹

All of the equity interests in Lux Bus are held by Matthew Brown and David Brown. Matthew Brown is an individual resident of the state of California and citizen of the United States. Matthew Brown does not have any direct or indirect ownership interest in any other interstate passenger motor carrier. David Brown is also an individual resident of the state of California and citizen of the United States. In addition to his interest in Lux Bus, David Brown has a 50% equity ownership interest in Expeditors By Lindale, Inc., doing business as Expeditors (Expeditors). Expeditors is a motor carrier of passengers that primarily provides equipment and services for disaster support (such as support for wildland firefighting crews) in California and surrounding areas. The USDOT Number assigned to Expeditors is 459936, and Expeditors has a “Satisfactory” USDOT Safety Rating. Expeditors holds interstate carrier operating authority

¹ AAAHI also states that, as part of the proposed transaction, it will acquire control of Lux Leasing, LLC (Lux Leasing), a California limited liability company and a motor carrier. However, as AAAHI explains, Lux Leasing does not provide interstate transportation and does not have a USDOT number or interstate operating authority from FMCSA. According to AAAHI, Lux Leasing operates only in California, providing intrastate transportation pursuant to authority issued by the CPUC. Because Lux Leasing does not engage in interstate transportation, Lux Leasing is not subject to the Board’s jurisdiction and the acquisition of Lux Leasing is not subject to the Board’s acquisition authority under 49 U.S.C. § 14303. See 49 U.S.C. § 14303 (stating that certain “transactions involving motor carriers of passengers subject to jurisdiction under subchapter I of chapter 135 may be carried out only with the approval of the Board.” (emphasis added)); 49 U.S.C. § 13501 (stating that the Board has jurisdiction only over motor carriers that provide interstate transportation).

from FMCSA under MC-246949. In providing its services, Expeditors utilizes approximately 37 vehicles and 38 drivers. Expeditors is not a party to, nor is it a subject of, the proposed transaction. Apart from Lux Bus and Expeditors, David Brown does not have any direct or indirect ownership interest in any other interstate passenger motor carrier.

Under 49 U.S.C. § 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. AAAHI has submitted the information required by 49 C.F.R. § 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. § 14303(b) and a statement that the gross operating revenues of Lux Bus, AAAHI, and the Affiliated Carriers (which, as described above, are controlled by AAAHI) exceeded \$2 million for the 12-month period immediately preceding the filing of AAAHI's application. See 49 U.S.C. § 14303(g).²

AAAHI asserts that the proposed transaction would not have a material, detrimental impact on the adequacy of transportation services available for the public. AAAHI explains that it anticipates that services to the public would be improved because Lux Bus would continue to operate, but going forward, it would operate as part of AAAHI's corporate family, an organization thoroughly experienced in passenger transportation operations. AAAHI further states that it intends to use its business and financial management skills, as well as its capital, to increase the efficiencies and enhance the viability of Lux Bus, thereby ensuring the continued availability of adequate passenger transportation service for the public. AAAHI also explains that the same services currently provided by Lux Bus would continue to be provided under the same name currently used to provide such services.

With respect to fixed charges, AAAHI states that there are no significant fixed charges associated with the proposed transaction.

Regarding the interests of employees, AAAHI asserts that it intends to continue the existing operations of Lux Bus and therefore "does not anticipate a measurable reduction in force or changes in compensation levels and/or benefits." (AAAHI App. 8.) However, AAAHI notes that "staffing redundancies could potentially result in limited downsizing of back-office and/or managerial level personnel." (Id.)

Finally, AAAHI states that the impact of the proposed transaction on the regulated motor carrier industry would be minimal and that neither competition nor the public interest would be adversely affected. AAAHI cites Board precedent finding that there are low barriers to entry in the passenger motor carrier industry and that the industry is characterized by healthy intramodal and intermodal competition. AAAHI also states that the Board has consistently found that the acquisition of control of numerous motor carriers by a non-carrier can result in better overall service without harming competition. AAAHI goes on to explain that there are a substantial

² Parties must certify that the transaction involves carriers whose aggregate gross operating revenues exceed \$2 million, as required under 49 C.F.R. § 1182.2(a)(5).

number of competitors operating in the markets in which Lux Bus competes (i.e., the markets for charter and shuttle services in the Los Angeles and San Francisco areas; tour services to amusement attractions in the Los Angeles area; and daily roundtrip and one-way service between Los Angeles and Las Vegas). Specifically, AAAHI states that there are a variety of charter and shuttle service providers where it operates, ranging from small charter and tour operators to very large corporate charter operators, and that service between Los Angeles and Las Vegas is provided by a number of other motor carriers as well as airlines. AAAHI further states that there is limited, if any, overlap in service areas or in customer bases among the Affiliated Carriers and Lux Bus.

On the basis of the application, the Board finds that the proposed acquisition is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 C.F.R. § 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

Board decisions and notices are available on our website at www.stb.gov.

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.
2. If opposing comments are timely filed, the findings made in this notice will be deemed as having been vacated.
3. This notice will be effective November 6, 2018, unless opposing comments are filed by November 5, 2018.
4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

Decided: September 17, 2018

By the Board, Board Members Begeman and Miller.